

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 06-cr-178-01-SM

Francisco David Avalos-Morfin

ORDER

Re: Document No. 20, Defendant's Motion to Reduce Sentence

Ruling: Denied. Defendant's motion is difficult to understand. He does not specifically invoke relief under the provisions of 28 U.S.C. Section 2255, but, on the other hand, he does seem to be challenging his sentence based upon the "plain error doctrine" or upon United States v. Booker, 543 U.S. 220 (2005), or both. Booker removed the mandatory character of the Sentencing Guidelines, but that decision was handed down well before Defendant was sentenced, and defendant received the full benefit of that decision at his sentencing hearing. The motion is without merit with respect to the only substantive issue the court can identify, and the records and pleadings conclusively show that defendant is entitled to no relief. Accordingly, the motion, construed as a general motion for appropriate relief, is denied. (It would appear that the time in which defendant might file a motion under Section 2255 has expired, and this motion may have been untimely under the one-year limitations period, absent "mail rule" relief. But even if construed as a Section 2255 motion, the outcome would be identical).


Steven J. McAuliffe
Chief Judge

Date: June 26, 2008

cc: Francisco Avalos-Morfin, pro se
Counsel of Record